

COMMISSION PROVISIONAL REPORT AND RECOMMENDATION: RULE 5.6 [1-500]

Commission Drafting Team Information

Lead Drafter: Mark Tuft

Co-Drafters: Jeffrey Bleich, James Ham, Lee Harris

I. CURRENT CALIFORNIA RULE

Rule 1-500 Agreements Restricting a Member's practice

- (A) A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a member to practice law, except that this rule shall not prohibit such an agreement which:
- (1) Is a part of an employment, shareholders', or partnership agreement among members provided the restrictive agreement does not survive the termination of the employment, shareholder, or partnership relationship; or
 - (2) Requires payments to a member upon the member's retirement from the practice of law; or
 - (3) Is authorized by Business and professions Code sections 6092.5 subdivision (i), or 6093.
- (B) A member shall not be a party to or participate in offering or making an agreement which precludes the reporting of a violation of these rules.

Discussion

Paragraph (A) makes it clear that the practice, in connection with settlement agreements, of proposing that a member refrain from representing other clients in similar litigation, is prohibited. Neither counsel may demand or suggest such provisions nor may opposing counsel accede or agree to such provisions.

Paragraph (A) permits a restrictive covenant in a law corporation, partnership, or employment agreement. The law corporation shareholder, partner, or associate may agree not to have a separate practice during the existence of the relationship; however, upon termination of the relationship (whether voluntary or involuntary), the member is free to practice law without any contractual restriction except in the case of retirement from the active practice of law.

I.A. CURRENT ABA MODEL RULE

Rule 5.6 Restrictions On Right To Practice

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

II. FINAL VOTES BY THE COMMISSION AND THE BOARD

Commission:

Date of Vote: January 20 & 21, 2017

Action: Recommend Board Adoption of Proposed Rule 5.6 [1-500]

Vote: 14 (yes) – 0 (no) – 0 (abstain)

Board:

Date of Vote: March 10, 2017

Action: Board Adoption of Proposed Rule 5.6 [1-500]

Vote: X (yes) – X (no) – X (abstain)

III. COMMISSION'S PROPOSED RULE 5.6 [1-500] (CLEAN)

Rule 5.6 [1-500] Restrictions on a Lawyer's Right to Practice

- (a) Unless authorized by law, a lawyer shall not participate in offering or making:
 - (1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of

the relationship, except an agreement that: concerns benefits upon retirement, or

- (2) an agreement that imposes a restriction on a lawyer's right to practice in connection with a settlement of a client controversy, or otherwise.
- (b) A lawyer shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.
- (c) This Rule does not prohibit an agreement that is authorized by Business and Professions Code §§ 6092.5(i) or 6093.

Comment

[1] Concerning the application of paragraph (a)(1), see Business and Professions Code § 16602; *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].

[2] Paragraph (a)(2) prohibits a lawyer from offering or agreeing not to represent other persons* in connection with settling a claim on behalf of a client.

[3] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

IV. COMMISSION'S PROPOSED RULE 5.6 [1-500] (REDLINE TO CURRENT CALIFORNIA RULE 1-500)

Rule 1-500 ~~Agreements Restricting a Member's~~ [5.6] Restrictions on a Lawyer's Right to Practice

(a) Unless authorized by law, a lawyer shall not participate in offering or making:

- (A1) ~~A~~ a member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a ~~member~~ lawyer to practice ~~law~~ after termination of the relationship, except ~~that this rule shall not prohibit such~~ an agreement ~~which~~ that concerns benefits upon retirement, or
- ~~(1) Is a part of an employment, shareholders', or partnership agreement among members provided the restrictive agreement does not survive the termination of the employment, shareholder, or partnership relationship; or~~
- ~~(2) Requires payments to a member upon the member's retirement from the practice of law; or~~ an agreement that imposes a restriction on the lawyer's right to practice is part of the settlement of a client controversy, or otherwise.

~~(3) Is authorized by Business and Professions Code sections 6092.5 subdivision (i), or 6093.~~

(Bb) A ~~member~~lawyer shall not ~~be a party to or~~ participate in offering or making an agreement which precludes the reporting of a violation of these rules.

(c) This Rule does not prohibit an agreement that is authorized by Business and Professions Code §§ 6092.5(i) or 6093.

DiscussionComment

~~Paragraph (A) makes it clear that the practice, in connection with settlement agreements, of proposing that a member refrain from representing other clients in similar litigation, is prohibited. Neither counsel may demand or suggest such provisions nor may opposing counsel accede or agree to such provisions.~~

~~Paragraph (A) permits a restrictive covenant in a law corporation, partnership, or employment agreement. The law corporation shareholder, partner, or associate may agree not to have a separate practice during the existence of the relationship; however, upon termination of the relationship (whether voluntary or involuntary), the member is free to practice law without any contractual restriction except in the case of retirement from the active practice of law.~~

[1] Concerning the application of paragraph (a)(1), see Business and Professions Code § 16602; *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].

[2] Paragraph (a)(2) prohibits a lawyer from offering or agreeing not to represent other persons* in connection with settling a claim on behalf of a client.

[3] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

IV.A. COMMISSION'S PROPOSED RULE 5.6 **(REDLINE TO CURRENT ABA MODEL RULE 5.6)**

Rule 5.6 [1-500] Restrictions on ~~Rights~~a Lawyer's Right to Practice

A(a) Unless authorized by law, a lawyer shall not participate in offering or making:

- (a1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement ~~concerning~~that concerns benefits upon retirement~~;~~; or
- (b2) an agreement ~~in which~~that imposes a restriction on ~~the~~a lawyer's right to practice ~~is part of the~~in connection with a settlement of a client controversy, or otherwise.

- (b) A lawyer shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.
- (c) This Rule does not prohibit an agreement that is authorized by Business and Professions Code §§ 6092.5(i) or 6093.

Comment

[1] ~~An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm. Concerning the application of paragraph (a)(1), see Business and Professions Code § 16602; *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].~~

[2] Paragraph (b)(2) prohibits a lawyer from offering or agreeing not to represent other persons* in connection with settling a claim on behalf of a client.

[3] This Rule does not ~~apply to~~ prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17..

V. RULE HISTORY

Rule 2-109 was adopted in 1975 following the 1972 State Bar of California Special Committee's Study of the ABA Code of Professional Responsibility. Rule 2-109 largely followed the provisions of ABA Code DR 2-108. Rule 2-109 was intended to deter situations called to the Committee's attention in which lawyers had "agreed" to restrict their practice (i.e., geographically) upon termination of employment with a law firm. It was believed such agreements violated state antitrust laws. See Business and Professions Code Section 16600, et. seq. In addition, rule 2-109 also prohibited a lawyer from agreeing, as part of a settlement, to restrict the lawyer's practice, for example, a lawyer who agrees not to represent another plaintiff in a lawsuit against a manufacturer that is based on the same defect in the manufacturer's product as was alleged in the settled matter.

In 1989, as part of a comprehensive revision and reordering of the Rules of Professional Conduct, rule 2-109 was renumbered rule 1-500. Proposed rule 1-500(A) carried forward the prohibition of agreements restricting the right of a lawyer to practice law in rule 2-109(A).

Rule 2-109(B), which provided exceptions to paragraph (A)'s general prohibition, was also carried forward. Paragraph (B)(1) was expanded to clarify that a restrictive employment agreement would not survive the termination of the relationship created or contemplated by the agreement, and that the rule was applicable to an agreement between shareholders of a law corporation.

Paragraph (C), similar to Business and Professions Code section 6090.5, was added to expressly prohibit a lawyer from requiring, as a condition of settling a civil action for

professional misconduct brought against the attorney, that the client agree not to file a complaint with the State Bar concerning the conduct. Paragraph (C) was intended to be broader than the statute because it was not limited to circumstances involving attorney malpractice.

In 1992, Paragraphs (A) and (B) were consolidated for greater clarity. No substantive change was intended. Proposed subparagraph (A)(3) was new. It added a new exception to rule 1-500 where a member enters into an agreement in connection with State Bar discipline that restricts the member's practice pursuant to Business & Professions Code §§ 6092(i) (agreements in lieu of discipline), and 6093 (conditions of probation).

A proposed amendment to the second paragraph of the Discussion section conformed it to the relettering of the paragraphs of the text. No substantive change was intended.

VI. OCTC / STATE BAR COURT COMMENTS

- **Gregory Dresser, Office of Chief Trial Counsel, 9/27/2016**
(In response to 90-day public comment circulation):

1. OCTC supports this rule and Comments 1 and 3.
2. OCTC is concerned that Comment 2 is unnecessary and merely repeats the rule.

- **State Bar Court:** No comments were received from State Bar Court.

VII. PUBLIC COMMENTS & PUBLIC HEARING TESTIMONY

No public comments were received during the 45-day public comment circulation.

VIII. RELATED CALIFORNIA LAW AND ABA MODEL RULE ADOPTIONS

The ABA Comparison Chart, entitled "Variations of the ABA Model Rules of Professional Conduct, Rule 5.6: Restrictions on Right to Practice," revised April 21, 2015, is available at::

- http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_5_6.authcheckdam.pdf
- Twenty-seven states have adopted Model Rule 5.6 verbatim.¹ Twenty-three jurisdictions have adopted a rule that is substantially similar to Model Rule 5.6.²

¹ The 27 states are: Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Wisconsin, and Wyoming.

² The 23 jurisdictions are: Alabama, Alaska, Arizona, Arkansas, District of Columbia, Georgia, Hawaii, Idaho, Kentucky, Massachusetts, Michigan, Mississippi, New Jersey, New York, North

California has adopted a rule substantially different in format and structure from Model Rule 5.6. However, the substance of rule 1-500 is substantially similar to the Model Rule.

- Eight states have adopted a rule that provides for an exception for practice restrictions in connection with a sale of a law firm.³

IX. CONCEPTS ACCEPTED/REJECTED; CHANGES IN DUTIES; NON-SUBSTANTIVE CHANGES; ALTERNATIVES CONSIDERED

A. Concepts Accepted (Pros and Cons):

1. Recommend that the structure of current rule 1-500 be replaced with the rule structure used in jurisdictions that have adopted the Model Rule structure, i.e., state ~~only~~ the general prohibitory language in the introductory clause (“shall not participate in offering or making”) of paragraph (a), add a clause stating an “authorized by law” proviso, and then state the two specific prohibited agreements: (1) partnership/shareholders/operating/employment agreements (“partnership agreements”) that restrict right to practice; and (2) agreements to restrict practice made as part of a settlement.⁴ ~~[The language “unless authorized by law” was added to the introductory clause.]~~
- Pros: The Model Rule structure more accurately distinguishes the two kinds of prohibited agreement, recognizing that the former kind (partnership, etc.) is subject to exceptions, while the latter kind (agreement as part of settlement) is not. Current rule 1-500 is confusing because none of the three exceptions in paragraph (A) would apply to an agreement made as part of a settlement that restricts a lawyer’s practice. In addition, all other 50 jurisdictions have adopted the Model Rule structure. Adopting the Model Rule structure should facilitate compliance with the Rule’s limitations on partnership agreements by multijurisdictional law firms.
- Cons: There is no evidence that the structure of current rule 1-500 has been confusing or misleading.
2. ~~Recommend adding an exception to paragraph (a)(1)~~ Include a proviso at the start of paragraph (a) that would permit a practice restriction in partnership agreements that “is authorized by law.” ~~[This concept was adopted].~~

Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington, and West Virginia.

³ The eight states are: Alaska, Arkansas, Hawaii, Idaho, Michigan, Mississippi, New York, and Pennsylvania.

⁴ Current rule 1-500 instead states in the introductory clause the two specific prohibitions on (i) a restriction on practice made as part of a settlement or (ii) any other restriction on practice, then states three exceptions to the prohibition.

- Pros: The exception would codify the general holding in *Howard v. Babcock* (1993) 6 Cal.4th 409 [25 Cal.Rptr.2d 80] that a partnership can impose reasonable costs on a departing lawyer in compliance with Bus. & Prof. Code § 16602. The drafting team has recommended a general “authorized by law” exception because of the wide range of restrictive arrangements that law firms might employ under § 16606 and that any attempt to describe more specifically the holding in *Howard v. Babcock* would be inaccurate.⁵
- Cons: It is not certain that *Howard v. Babcock* created an exception to rule 1-500; rather, it is arguable that court viewed the law firm’s agreement in compliance with Bus. & Prof. Code § 16602 as not having violated rule 1-500. (See IX., Open Issues, below.)

3. Recommend adoption of Model Rule 5.6(b) as proposed rule 5.6(a)(2).

- Pros: Proposed paragraph (a)(2) adheres to the recommended structure of Model Rule 5.6. (See paragraph 1.) This would not be a substantive change from current rule 1-500, which includes the same prohibition in the introductory clause to paragraph (A).
- Cons: None identified so long as the Model Rule structure is approved.

4. Recommend retaining current rule 1-500(B) (prohibiting agreements not to report violations of the Rules), but bracket the paragraph as a placeholder to indicate that its inclusion in proposed Rule 5.6 is without prejudice to the Rule 1-

⁵ In addition to general exception recommended, the drafting team also considered the following variations for paragraph (a)(1):

(1) **[ALT1]** a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement that: (i) concerns benefits upon retirement, or (ii) imposes reasonable costs on a departing partner or shareholder who competes with the law firm, provided that such costs are imposed for only a limited time in a limited geographical area;

(1) **[ALT2]** a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement that: (i) concerns benefits upon retirement, or (ii) imposes reasonable costs as authorized by Business and Professions Code § 16602 on a departing partner or shareholder who competes with the law firm;

(1) **[ALT3]** a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement that: (i) concerns benefits upon retirement, or (ii) is authorized by Business and Professions Code § 16602;

The drafting team also considered not including a new exception for the *Howard v. Babcock* situation but instead address it in a comment as had RRC1. (See IX, Open Issues, below.)

120/8.4 drafting team's including the provision in a proposed Rule 8.3 [Reporting Misconduct].

- Pros: The provision is an important public protection and should be retained in the Rules. Although this prohibition on agreements *not to report rule violations* arguably does not fit in a rule that is intended to prohibit restrictions on practice, by retaining the provision in this Rule pending its consideration by the 1-120/8.4 team will ensure that it will not be dropped from the Rules.⁶
- Cons: None identified.

5. Recommend retention of current rule 1-500(A)(3), which provides an exception for agreements that impose restrictions on practice as part of disciplinary proceedings pursuant to Bus. & Prof. Code §§ 6092.5(i) and 6093. ~~(See —[This concept is now included in paragraph (c)].)~~

- Pros: There is no evidence that there is a problem with this provision. Removing it could lead to unnecessary litigation as to whether the Bus. & Prof. Code sections trumped Rule 5.6's prohibitions on agreements restricting practice. Placing the provision in a separate paragraph is not intended as a substantive change but is recommended to conform to the recommended Model Rule structure. (See paragraph 1, above.)
- Cons: None identified.

6. Recommend adoption of proposed Comment [1], which includes citations to Bus. & Prof. Code § 16602 and *Howard v. Babcock*.

- Pros: Provides importance guidance on how the “authorized by law” exception in paragraph (a)(1)(ii) might be applied. The drafting team believes that rather than attempting to accurately characterize the holding in *Howard v. Babcock*, it is more helpful to provide citations to § 16602 and the case for the requisite interpretive guidance.⁷

⁶ The provision, which was moved to RRC1 proposed Rule 8.3, was inadvertently dropped from RRC1's proposed Rules when the Board rejected proposed Rule 8.3. The drafting team wants to ensure that a similar inadvertent deletion does not occur.

⁷ The drafting team also considered adapting the second sentence of RRC1's comment concerning *Howard v. Babcock* as follows:

Paragraph (a)(1) prohibits an agreement restricting the right of a lawyer to practice after leaving a firm except for an agreement among partners imposing a reasonable cost on the departing partner or shareholder who competes with the law firm in a limited geographical area, as such an agreement strikes a balance between the interests of clients in having the attorney of choice, and the interest of the law firm in a stable business environment. See *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].

- Cons: None identified.
7. Recommend adoption of proposed Comment [2], which is based on Model Rule 5.6, cmt. [2], and explains how paragraph (a)(2) is applied.
- Pros: The comment does not merely restate the black letter, which expressly prohibits an agreement that restricts a lawyer's right to practice, which by its terms could include an agreement to cease all practice of law. The comment clarifies that this prohibition is intended to apply to the specific situation where a lawyer agrees not to represent particular persons, e.g., plaintiffs who might bring a similar claim.
 - Cons: The comment merely restates the substance of paragraph (a)(2).
8. Recommend adoption of proposed comment [3], which excepts from the application of the Rule agreements for the sale of a law practice.
- Pros: An agreement to sell a law practice will likely include a clause that restricts the selling lawyer's ability to continue practice and compete with the practice after it is sold. This rule should not frustrate the policy underlying current rule 2-300 [1.17] to permit a solo practitioner to receive compensation for the good will developed. Finally, this comment has been adopted by nearly every jurisdiction, although eight jurisdictions include the exception in the black letter of their rule.⁸
 - Cons: The provision should not be included unless the Commission recommends adopting Model Rule 1.17, which permits the sale of an area (field) of practice and not just the entire practice. The policy underlying current rule 2-300 [1.17], which requires sale of the *entire* practice, is to permit a solo practitioner to receive compensation for the good will developed upon the selling lawyer's retirement from practice. Where the seller retires, there should be no need for a practice restriction clause in the sale agreement.

B. Concepts Rejected (Pros and Cons):

1. Retain current rule 1-500, Discussion ¶.1, which concerns agreements restricting a lawyer's right to practice made as part of a settlement.
- Pros: There is no evidence that Discussion ¶. 1 has caused problems. It is an articulate statement of the practice that proposed paragraph (a)(2) is intended to prohibit.
 - Cons: Proposed Comment [2], which is derived from Model Rule 5.6, cmt. [2], is a more succinct statement of the same subject matter.

⁸ See note 3, above.

2. Retain current rule 1-500, Discussion ¶. 2, which concerns practice restrictions in partnership agreements.
 - Pros: The Discussion paragraph elaborates on the prohibition against restrictions on practice in partnership agreements.
 - Cons: The Discussion paragraph merely restates the rule provision it is intended to explain. Moreover, it is an incomplete statement of the current law in light of *Howard v. Babcock*.
3. Recommend adoption of a provision that would prohibit confidential settlement agreements. (See article by Richard Zitrin, attached.)
 - Pros: Confidential settlements undermine public safety to the extent evidence of dangerous products is concealed by preventing disclosure of the evidence in a case. Confidential settlements also potentially frustrate the objective of Rule 5.6 to prevent restrictions on practice as part of a settlement; with a confidential settlement, there is no evidence whether rule 5.6 was violated.
 - Cons: If confidential settlements are to be prohibited, it should be accomplished by statute or rule of procedure, not a rule of professional conduct. There are many policy decisions that implementing such a rule would require that are beyond the scope of the Commission's Charter.
4. Recommend adoption of a provision that would prohibit institutional clients from requiring that a lawyer, as part of a retention agreement, not represent certain persons, e.g., a competitor of the client.⁹ (See 6/29/2015 Letter to Chair & Commission from Anthony Davis, on behalf of Law Firm General Counsel.)
 - Pros: According to the author, the provision would avoid frustrating a subsequent client from retaining counsel of choice because of the agreement. Provision would presumably apply to sophisticated clients who tend to seek such agreements.
 - Cons: As with a provision prohibiting confidential settlements, this provision would require policy decisions for implementation that are beyond the scope of the Commission's Charter.

This section identifies concepts the Commission considered before the rule was circulated for public comment. Other concepts considered by the Commission, together

⁹ The proposed provision would provide:

(c) A member shall not be a party to or participate in offering or making an agreement with a client containing a categorical restriction against: (i) the representation of parties that are mere competitors of the client not adverse to the client in a matter or (ii) the representation of parties in matters adverse to legal entities that lack a unity of interest with that client."

with the Commission's reasons for not recommending their inclusion in the rule, can be found in the Public Comment Synopsis Tables.

C. Changes in Duties/Substantive Changes to the Current Rule:

1. See Section IX.A.1, above, re the adoption of Model Rule 5.6 structure and rejection of the current California structure. However, although the rule's appearance will be different, the substantive duties will largely remain the same. (See paragraph 2, below.)
2. The addition of the "authorized by other law" exception is a substantive change to current Rule 1-500, but should not result in a change of duties as lawyers and firms are already subject to the holding in *Howard v. Babcock*. (See Section IX.A.2, above.)

D. Non-Substantive Changes to the Current Rule:

1. Substitute the term "lawyer" for "member".
 - Pros: The current Rules' use of "member" departs from the approach taken in the rules in every other jurisdiction, all of which use the term lawyer. The Rules apply to all non-members practicing law in the State of California by virtue of a special or temporary admission. For example, those eligible to practice pro hac vice or as military counsel. (See e.g. rules 9.40, 9.41, 9.42, 9.43, 9.44, 9.45, 9.46, 9.47, and 9.48 of the California Rules of Court.)
 - Cons: Retaining "member" would carry forward a term that has been in use in the California Rules for decades.
2. Change the rule number to correspond to the ABA Model Rules numbering and formatting (e.g., lower case letters)
 - Pros: It will facilitate the ability of lawyers from other jurisdictions who are authorized to practice in California (see current rule 1-100(D)(1), which recognizes that reality, and rules such as the rule for *pro hac vice* admission, Rule of Court 9.40) to find the California rule corresponding to their jurisdiction's rule, thus permitting ease of determining whether California imposes different duties. It will also facilitate the ability of California lawyers to research case law and ethics opinions that address corresponding rules in other jurisdictions, which would be of assistance in complying with duties, particularly when California does not have such authority interpreting the California rule. As to the "Con" that there is a large body of case law that cites to the current rule numbers, the rule numbering was drastically changed in 1989 and there has been no apparent adverse effect. A similar change in rule numbering of the Rules of Court was implemented in 2007, also with no apparent adverse effect.

- Cons: There is a large body of case law that cites to the current rule numbers and California lawyers are presumed to be familiar with that numbering system.

E. Alternatives Considered:

1. The only alternative considered was to retain the structure of current rule 1-500. (See Section IX.A.1, above.)

X. RECOMMENDATION AND PROPOSED COMMISSION RESOLUTION

Recommendation:

The Commission recommends adoption of proposed Rule 5.6 [1-500] in the form attached to this Report and Recommendation.

Proposed Resolution:

RESOLVED: That the Board of Trustees adopt proposed Rule 5.6 [1-500] in the form attached to this Report and Recommendation.

